IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.MC.No. 4981 of 2003()

CC.725/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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PETITIONER: PETITIONERS

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1. PAILY PAULOSE S/O. PAILY,
   KARAKKATTU HOUSE, KUMARAPURAM.

2. KUMARAN S/O. KURUMBAN, MULANKATTU HOUSE,
   VEMBILLY, KUNATHU NADU.

BY ADV. SRI.C.AJITH KUMAR (KALLESSERIL)

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
(IN C.C.725/96 ON THE FILE OF THE JUDICIAL
FIRST CLASS MAGISTRATE, KOLENCHERRY)

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl. M.C.No.4981 of 2003-C

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Dated this the 13th day of November, 2007

O R D E R

The petitioners are the sureties to the accused in C.C.No.725/1996. It is their grievance that distress warrant have been issued against them without affording them an opportunity to present their case and also without a speaking order. Annexure A is the copy of the proceedings of the court which shows that on the date of the posting, notice was issued to the accused to appear and receive the sentence, and on the next posting date the accused was absent and notice was issued to the sureties and the accused. Thereafter, the order is to repeat warrant to accused and notice to sureties. Thereafter, warrants have been repeated to the accused and on 06/06/2003 non-bailable warrant to the accused and distress warrant to sureties were ordered. It is submitted that there is no order as contemplated under Section 446 Cr.P.C.

2. I find that the court is not empowered to issue distress warrant in such a manner and without a speaking order. Hence, the order dated 06/06/2003 issuing distress warrant to the sureties/petitioners is herewith quashed. The Crl.M.C is allowed.

K.R.UDAYABHANU,
Judge

ms